## The Minutes

## November 4, 2002

C037390 THE PEOPLE v. VONG

(Not for Publication)

BY THE COURT:

It is ordered that the opinion filed in this case on October 9, 2002, be modified as follows: ... This modification does not change the judgment. The petition for rehearing by appellant is denied.

FOR THE COURT:

Sims, Acting P.J. Davis, J. Morrison, J.

### November 5, 2002

#### MISC. ORDER 2002-14

By The Court:

Associate Justice Coleman A. Blease is appointed to serve as Acting Presiding Justice to discharge the duties described in the California Rules of Court, rules 75, 76, 77 and 78, during the absence of the Presiding Justice from the court on November 12, 2002, through November 18, 2002, or until his return. (See Cal. Const. Art 6, Sec. 3.) The senior member of a panel of the Court is designated Acting Presiding Justice of that panel <u>during</u> the <u>absence</u> of the Presiding Justice.

SCOTLAND, P.J.

# C040301 THE PEOPLE v. WHYARD

(Not for Publication)

The judgment is reversed, and the matter is remanded to the trial court to allow defendant to withdraw his guilty plea. If defendant so moves, the trial court must grant his motion. If defendant does not move to withdraw his guilty plea within 90 days of the filing of the remittitur in the trial court, the trial court shall reinstate the judgment.

CALLAHAN, J.

We concur: Scotland, P.J.

Hull, J.

#### The Minutes

# November 5, 2002, continued

# C040349 THE PEOPLE v. CONSTANCIO (Not for Publication)

The judgment is reversed and the matter is remanded to the trial court to hold a Marsden hearing and consider defendant's complaints about his trial attorney. The court shall determine whether to appoint substitute counsel (unless defendant wishes to represent himself) to consider a motion for a new trial. If the trial court does not find adequate grounds to grant the motion, the court shall reinstate the judgment.

CALLAHAN, J.

We concur: Scotland, P.J.

Hull, J.

C040984 THE PEOPLE v. FIELDS (Not for Publication)

The judgment is affirmed.

KOLKEY, J.

We concur: Davis, Acting P.J.

Hull, J.

C041366 THE PEOPLE v. CUMMINGS (Not for Publication)

The judgment is affirmed.

SCOTLAND, P.J.

We concur: Morrison, J.

Callahan, J.

C039473 QUILICI v. BURKHART (Not for Publication)

THE COURT:

In his petition for rehearing, appellant asserts "the notice of appeal from the first appeal... came from McDonough, Holland & Allen..."....

Each of appellant's arguments for rehearing is without merit. Accordingly, the petition for rehearing is denied.

THE COURT:

NICHOLSON, J. MORRISON, J. HULL, J.

C039473 QUILICI v. BURKHART

BY THE COURT:

Appellant's request to publish the opinion filed on October 8, 2002, is denied. NICHOLSON, Acting P.J.

# The Minutes

# November 5, 2002, continued

C039503 ZOFFKA, etc., et al. v. SCHUMACHER

BY THE COURT:

Pursuant to the written request of the appellants, the appeal filed October 5, 2001, is dismissed. It is further ordered that the remittitur issue forthwith. (See Cal. Rules of Court, rule 19(b).)

SCOTLAND, P.J.

# November 6, 2002

THE PEOPLE v. EDMONTON C036988 (Not for Publication)

The judgment is affirmed.

RAYE, Acting P.J.

We concur: Morrison, J.

Hull. J.

C038067 THE PEOPLE v. TRUJILLO (Not for Publication)

The judgment is affirmed.

HULL, J.

We concur: Scotland, P.J.

Blease, J.

C038077 THE PEOPLE v. SEVERANCE

BY THE COURT:

It is ordered that the opinion filed here in on October 30, 2002, be modified as follows... There is a change in judgment.

FOR THE COURT:

SCOTLAND, P.J.

HULL, J. ROBIE, J.

C041241 In re J.S. et al.; SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND (Not for Publication)

**HUMAN SERVICES v. C.M.** 

The orders are affirmed.

CALLAHAN, J.

We concur: Sims, Acting P.J.

Robie, J.

# The Minutes

## November 7, 2002

# C039528 THE PEOPLE v. LIM

(Not for Publication)

This case is remanded to the trial court. The judgment is modified by imposing a \$50 laboratory fee under Health and Safety Code section 11372.5, a \$50 penalty assessment under Penal Code section 1464, and a \$35 penalty assessment under Government Code section 76000. The judgment is modified to reflect that count II and count III are to run concurrently to count IV. The trial court shall determine the amount of presentence custody credit attributable to counts II, III, and IV. The trial court shall prepare an amended abstract of judgment including the amount of presentence credit, and the modification of the laboratory fee and penalty assessments, and shall forward a certified copy of same to the Department of Corrections. As modified, the judgment is affirmed.

SIMS, Acting P.J.

We concur: Morrison, J.

Callahan, J.

# C039656 THE PEOPLE v. JONES

(Not for Publication)

The judgment is affirmed.

RAYE, J.

We concur: Sims, Acting P.J.

Morrison, J.

### C039859 THE PEOPLE v. RICE

(Not for Publication)

The judgment is modified to award 82 days of actual credits and 40 days of conduct credits for a total of 122 days of presentence credits, and with this modification, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting the modification and to forward a certified copy thereof to the Department of Corrections.

RAYE. J.

We concur: Scotland, P.J.

Robie, J.

### C038544 HINTON v. GRANGE INSURANCE GROUP et al.

(Not for Publication)

The judgment is affirmed. Grange shall recover costs on appeal.

RAYE, Acting P.J.

We concur: Callahan, J.

Robie, J.

# The Minutes

# November 7, 2002, continued

# C040536 In re MARIAH L.; NEVADA COUNTY HUMAN SERVICES AGENCY v. DEBORAH H. (Not for Publication)

The orders of the juvenile court denying appellant's petition for modification and terminating appellant's parental rights are affirmed.

BLEASE, Acting P.J.

We concur: Nicholson, J.

Morrison, J.

# C040566 In re NATHANIEL B.; DEPARTMENT OF HEALTH AND HUMAN SERVICES v. WENDY A. and SHARON B. (Not for Publication)

The orders terminating parental rights and placing the minor for adoption are reversed. The juvenile court is directed to hold a new hearing to evaluate, fully and fairly, appellant and her husband as a relative placement for the minor. The juvenile court shall consider all relevant evidence both of the past and present circumstances without reference to the minor's current placement and adjustment to placement in the prospective adoptive home. If the juvenile court concludes placement with appellant and her husband is appropriate, the court shall order the placement and either again terminate parental rights with a permanent plan of adoption if appellant is still willing to adopt the minor or order another suitable permanent plan. If the juvenile court concludes placement with appellant and her husband is not appropriate, the court shall reinstate its prior orders terminating parental rights.

NICHOLSON, J.

We concur: Blease, Acting P.J.

Hull, J.

# C040700 In re K.M. et al.; SHASTA COUNTY DEPARTMENT IF SOCIAL SERVICES v. KENNETH M.

The juvenile court's order is affirmed.

HULL, J.

We concur: Scotland, P.J.

Callahan, J.

# C038278 THE PEOPLE v. HAYNES

BY THE COURT:

The appellant's petition for rehearing is granted. The decision filed on October 10, 2002, is vacated.

CALLAHAN, Acting P.J.

# The Minutes

# November 7, 2002, continued

# C038622 SIERRA CLUB et al. v. SAN JOAQUIN LOCAL AGENCY FORMATION, etc. and GOLD RUSH CITY HOLDING COMPANY, Inc, et al. and CITY OF LATHROP

BY THE COURT:

Stockton's East Water District's request to publish the opinion filed on October 28, 2002, is denied.

BLEASE, Acting P.J.

# November 8, 2002

#### C039965 THE PEOPLE v. ROACH

(Not for Publication)

The judgment is affirmed.

DAVIS, J.

I concur: Blease, Acting P.J.

I concur in the result.

Morrison, J.

#### C038872 STORM v. ASSEMBLY RULES COMMITTEE

(Not for Publication)

Because there is no triable issue of material fact with regard to pretext, the summary judgment is affirmed.

RAYE, J.

We concur: Davis, Acting P.J.

Callahan, J.

# C039579 EHLERS ELEVATORS, INC. v. BETA SEED COMPANY (Not for Publication)

The order denying the motion to compel arbitration is reversed. The trial court is directed to enter a new order granting the motion and ordering the parties to arbitrate the claims in this action under the terms of the arbitration provision in the 1994 agreement, with the exception that the arbitration shall occur in California, rather than in Minneapolis, Minnesota. The trial court is further directed to stay the action pending completion of the arbitration. The parties are to bear their own costs on appeal. (Cal. Rules of Court, rule 26(a).)

ROBIE, J.

I concur: Raye, Acting P.J.

I concur in the majority's conclusion that the arbitration clause in the parties' written agreement must be enforced pursuant to the Federal Arbitration Act (9 U.S.C. § 1 et seq.) (the FAA)

# The Minutes

# November 8, 2002, continued

However, I disagree that this court may refuse to enforce the provision specifying Minneapolis as the place of arbitration in the context of a commercial agreement between a Minnesota and a California party...

... It is not that I have no sympathy for Ehlers Elevators, but that a greater principle -- which benefits Ehlers and every other farmer and merchant -- is at stake.

KOLKEY, J.